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May 13, 2002

OFFICE OF THE
EXECUTIVE SECRETARY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

Re: *Complaint of US LEC of Tennessee, Inc. Against Electric Power Board of Chattanooga*

Docket No. 02-00562

Dear David:

Enclosed are the original and thirteen copies of a complaint filed by US LEC of Tennessee, Inc. against the Electric Power Board of Chattanooga.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

RE: COMPLAINT OF US LEC OF
TENNESSEE, INC. AGAINST ELECTRIC
POWER BOARD OF CHATTANOOGA

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) Docket No. 02-00562
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COMPLAINT

This complaint is filed by US LEC of Tennessee, Inc. ("US LEC") against the Electric Power Board of Chattanooga ("EPB") pursuant to T.C.A. § 65-4-117(l),¹ T.C.A. § 65-5-208(c),² and TRA Rule 1220-4-8-.09(b).³ As described below, US LEC alleges that EPB has engaged, and continues to engage, in discriminatory and anti-competitive practices in violation of state law and the orders of the Tennessee Regulatory Authority ("TRA").

1. US LEC is a competitive local exchange carrier certified by the Tennessee Regulatory Authority ("TRA") to offer intrastate telecommunications services in Tennessee. US LEC operates throughout the service area of BellSouth Telecommunications, Inc. in Tennessee, including the City of Chattanooga.

2. EPB is a municipal electric service provider and a board of the City of Chattanooga, Tennessee. EPB provides retail electric power to business and residential

¹ T.C.A. § 65-4-117(l) gives the TRA the power to "investigate . . . upon complaints any matter concerning any public utility."

² Pursuant to T.C.A. § 65-5-208(c), the TRA "shall, as appropriate . . . adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities . . . or other anti-competitive practices."

³ Rules 1220-4-8-.09(b) states, "Upon the complaint of any interested party that any telecommunications service provider has violated any of the anti-competitive or discriminatory rate prohibitions found in applicable rules or statutes, [the Authority] shall investigate the complaint and may convene a contested case proceeding if such complaint is found to have merit."

customers in the City of Chattanooga, most of Hamilton County, and parts of eight other counties located in Tennessee and Georgia.

3, Pursuant to T.C.A. § 7-52-401 *et seq.* and § 65-4-201 *et seq.*, EPB has been certified by the TRA to offer intrastate telecommunications services in Tennessee. See "Order Approving Application for Certificate of Public Convenience and Necessity" ("the Order"), issued May 10, 1999, docket no. 97-07488. Pursuant to the Order, EPB offers telecommunications services in the City of Chattanooga in competition with US LEC and other local exchange carriers.

3. Under the Order, EPB is required to comply with certain terms and conditions which were designed to prevent the electric division of EPB from cross-subsidizing, directly or indirectly, the telecommunications division of EPB. With a few, limited exceptions, such cross-subsidization of the telecommunications division is prohibited by T.C.A. § 7-52-402. The terms and conditions regarding cross-subsidization are contained in the "Second Revised Proposed Conditions," filed by EPB with the TRA on November 3, 1998, and incorporated by reference in the Order. See Order at page 5, footnote 2. A copy of the "Proposed Conditions" is attached.

4. The Proposed Conditions include a Code of Conduct which requires among other things, the following:

a. EPB "may not discriminate between the telecommunications division" and other telecommunications providers. Proposed Conditions, at 17.

b. The electric and telecommunications divisions of EPB may engage in a limited amount of joint marketing "provided that the customer is informed of the separate identities of each." *Id.*, at 16.

c. Internal auditors at EPB are required to test "the compliance of the telecommunications division and the electric system" with the Code of Conduct and the other

Proposed Conditions and to “issue a statement detailing the EPB’s compliance with the Code of Conduct.” *Id.*, at 19. Although the Proposed Conditions do not expressly state where the auditors “statement” of compliance must be published, the Order states that EPB must “provide the results of any such audits to the Authority.” Order, at p. 5, footnote 2.

5. In addition to the Proposed Conditions, EPB is also “subject to regulation by the Tennessee Regulatory Authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, without limitation, rules and orders governing anti-competitive practices.” T.C.A. § 7-52-401.

6. The telecommunications division of EPB operates under the name “EPB Telecommunications” (in practice, often shortened to “EPB”), thus giving the telecommunications division the benefit of the valuable good will created and maintained by EPB’s electric system and giving the public the impression that both telecommunications and electric services are provided by the same entity.⁴ Rather than trying to inform customers that the telecommunications division and electric division are separate entities, the telecommunications division states in its promotional materials that “we were there” in 1882 when Chattanooga first got electric power and that “our plan is to be around for the next 118 years too.”⁵ The same material claims that the telecommunications division “has all of the solid reliability, local accountability and community leadership of EPB, its parent division.” The division even implies that customers have a civic responsibility to purchase telephone services

⁴ In contrast, the telecommunications division of Memphis Light, Gas and Water does business as “Memphis Network,” a name unrelated to MLG&W.

⁵ The telecommunications division, of course, is only four years old. EPB’s claim is also exaggerated as it applies to the electric division. EPB itself was created by an act of the Tennessee legislature in 1935. See Order, at 8. Prior to that time, electricity in Chattanooga was provided by the Tennessee Electric Power Company, an investor owned utility regulated by the predecessor of the TRA.

from EPB because such purchases allegedly “benefit Chattanooga businesses and the community as a whole” and create a “much, much brighter future for our own city.” *See* attached exhibit from the web page of EPB Telecommunications. On at least one occasion, and likely others, executives of the telecommunications division have represented to potential customers that EPB Telecommunications “has been around for seventy years.” The selection of the name, EPB Telecommunications, for the telecommunications division and the repeated, sometimes inaccurate, statements about the relationship between the telecommunications and electric divisions are clearly intended to promote the telecommunications division by leveraging the reputation and good will of the electric division. Such actions violate both the Code of Conduct, which requires EPB to inform customers of “the separate identities” of the two divisions, and T.C.A. § 7-52-402 which, with limited exceptions not applicable here, expressly prohibits a municipal electric system from subsidizing its telecommunications operations..

7. Upon information and belief, US LEC further alleges that EPB’s electric division allows the telecommunications division to gain access to buildings by using rights-of-way and building entrance facilities which are used by, or under the control of, the electric division but that such facilities and access to rights-of-ways are denied to other, non-affiliated telecommunications carriers. This practice violates the Code of Conduct which prohibits EPB from discriminating in favor of its telecommunications operations over the other carriers. This practice also constitutes an illegal subsidization of EPB’s telecommunications operations in violation of T.C.A. § 7-52-402.

8. According to the public records at the TRA, the internal auditors of EPB have never issued any statements concerning EPB’s compliance with the Code of Conduct nor provided any such information to the TRA as required by the Order. This failure to file the internal audit reports constitutes a violation of the Order.

9. Based upon these allegations, US LEC asks the TRA to open an investigation concerning the practices of EPB and its telecommunications division, to convene a contested case proceeding concerning those practices, to impose sanctions for any violations of the Order and of state law, to promulgate additional terms and conditions as necessary to prevent further discrimination and cross-subsidization, to direct the telecommunications division to operate under a different name that has no relation to EPB and to make no reference to EPB in the division's promotional, advertising, and marketing materials, and to grant US LEC such other relief as may be warranted by the evidence and applicable law.

Respectfully submitted,

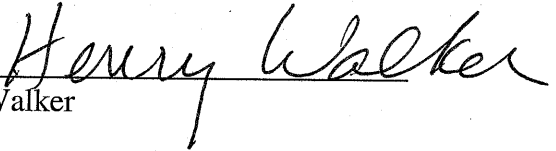
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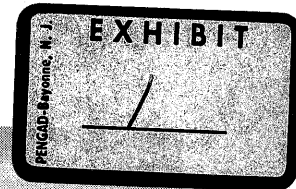
By: Henry Walker
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 15th day of May, 2002.

William C. Carriger, Esq.
Mark W. Smith, Esq.
400 Krystal Bldg.
One Union Square
Chattanooga, TN 37402-2514


Henry Walker



Telecommunications

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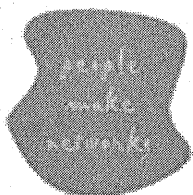
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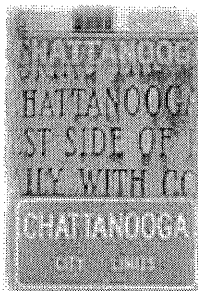
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advanced telephone, data and network
services for Chattanooga business...

Our Legacy



We were there on May 6, 1882; Chattanooga's first day ever with electric power. Twenty-five city streetlights were lit, and we became the south's first city with electric street lighting.

Now, Chattanooga has taken another great jump forward in technology. EPB Telecommunications has launched an extraordinarily powerful telecommunications network to serve the businesses of this city. This source for advanced voice and data services has all of the solid reliability, local accountability and community leadership of EPB, its parent division. Our plan is to be around for the next 118 years, too.

This advanced network benefits Chattanooga businesses and the community as a whole. Choosing EPB Telecommunications is choosing a much, much brighter future for our own city.

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:

APPLICATION OF ELECTRIC)
POWER BOARD OF CHATTANOOGA)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)
TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)

DOCKET NO. 97-07488

*SECOND REVISED PROPOSED CONDITIONS TO CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO ENSURE STATUTORY COMPLIANCE FILED
ON BEHALF OF THE TENNESSEE CABLE TELECOMMUNICATIONS
ASSOCIATION AND ELECTRIC POWER BOARD OF CHATTANOOGA*

The Tennessee Cable Telecommunications Association ("TCTA"), and the Electric Power Board of Chattanooga ("EPB"), the Applicant herein, file this revised joint proposal of conditions to which the Applicant's Certificate of Public Convenience and Necessity should be subject if it is later granted in this proceeding by the Tennessee Regulatory Authority ("TRA"). In preparing this second revised joint proposal, the TCTA and the Electric Power Board of Chattanooga have consulted pursuant to the request of the Directors of the TRA at the initial hearing on April 23, 1998, and at the hearing on October 13, 1998, and have agreed to the contents of this proposal with two exceptions which are noted. The other intervenors have been furnished copies and an opportunity to comment and join in if they wished.

I.

INTRODUCTION

The EPB filed an Application with the TRA on October 21, 1997 for a Certificate of Public Convenience and Necessity to become a Competing Telecommunications Service Provider as defined by Tennessee Code Annotated § 65-4-101 and § 65-4-201¹. As a municipally owned electric utility, the EPB is subject to the requirements contained in T.C.A. §§ 7-52-401 - 7-52-407 which are not applicable to other Competing Telecommunications Service Providers. At the initial hearing of this cause on April 23, 1998, certain intervenors, as well as the Directors, expressed a concern regarding the additional statutory requirements applicable to the Applicant in this proceeding, EPB. At the request of the Directors, the TCTA and the EPB have conferred in an attempt to identify a process which could be designed to ensure compliance with these additional statutory requirements. On September 9, 1998, the TCTA and the EPB filed proposed conditions to the Certificate. Prior to the hearing of this cause on October 13, 1998, the TCTA and the EPB negotiated further revisions, and the TCTA and the EPB filed revised proposed conditions at the hearing of this cause on October 13, 1998.

At the hearing of this cause on October 13, 1998, the Directors requested that the parties further consult regarding issues raised in that hearing and that the parties include further revisions to the revised proposed conditions, to the extent that such revisions could be worked out among the parties. These second revised proposed conditions incorporate those changes.

The parties agree that in order to comply fully with the prohibition against subsidies found in T.C.A. § 7-52-402 and to comply with the requirements of §§ 7-52-402, 7-52-404, and

¹For purposes of this joint proposal, the term "telecommunications services" are those services which require TRA authorization as a Competing Telecommunications Service Provider.

7-52-405 regarding cost imputation, the EPB should expand its accounting systems and modify portions of its accounting procedures. Explained below are the essential methods that EPB should adopt to properly separate telecommunications from electric power accounting data, provide assurance that subsidization does not occur, and to properly allocate cost.

II.

PURPOSE

The EPB has formed a telecommunications service division to achieve organizational and accounting separation from its electric power service operations. The ultimate goal of establishing rules and regulations to govern the EPB's affiliate transactions is to ensure just and reasonable rates for the ratepayers of the electric utility. Insuring just and reasonable rates that remain subject to regulation requires guarding against cross-subsidy of the EPB's ventures, principally its provision of telecommunications services. The rules and regulations outlined in the following sections are intended to discourage the EPB from subsidizing the costs of the newly created telecommunications division by shifting costs to the activities of the electric system. Furthermore, the rules and regulations are crafted to assure that ratepayers share in any efficiencies generated from joint use of facilities and services by the telecommunications division.

For the telecommunications division, EPB is establishing a telecommunications accounting system that is distinguishable from its electric accounting system. The new telecommunications system must enable telecommunications accounting transactions to be identified and recorded in a set of accounts distinct from the electric accounting records.

EPB has designed a chart of accounts for the telecommunications accounting system that utilizes the Federal Communications Commission's Uniform System of Accounts for Telecommunication Companies as defined in the Code of Federal Regulations, Title 47, Part 32.

EPB's use of these accounts will be in accordance with the Part 32 account definitions and will simplify telecommunications reporting to the TRA. All of the accounting entries recorded in these accounts shall be directly related to telecommunications service or shall be the result of an equitable and supportable allocation between telecommunications service and electric service.

Although all of the telecommunications accounting transactions, both direct and allocated, will originate in EPB's electric accounting system, they will be uniquely identified by means of predefined account number ranges or by assignment to a cost center specifically designated to accumulate telecommunications accounting activity. At month-end, these transactions will be summarized and transferred to the appropriate Part 32 accounts residing in the telecommunications accounting segment of the general ledger system. From the account balances maintained in this segment, the telecommunications accounting records will be available for reporting and historical analysis. The telecommunications financial statements prepared by EPB will present all of the accounting elements pertaining to its telecommunications operations and will be independent of EPB's electric financial statements.

Described below are the accounting principles and procedures EPB shall adopt to maintain its telecommunications and electric accounting records in conformance with the statutory requirements.

III.

Assignment and Allocation of Costs

Electric services provided to the telecommunications division shall be charged to the telecommunications activity at the current electric rates and credited to the revenue account of the electric system for that service.

Costs assigned to and allocated between the electric system and the telecommunications division shall be at fully allocated costs. In the case of an annual charge for facilities, the fully allocated costs should include at a minimum property taxes, depreciation expenses, maintenance expenses and a rate of return on the investment in the asset. In the case of personnel, the fully allocated costs should include all employee benefits, payroll taxes, insurance, pension, and post-retirement benefits other than pension. Cost assignment and allocation should be based upon the following principles:

Directly Assignable Costs - costs of assets and resources incurred exclusively for providing either electric utility services or telecommunications activities.

Directly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and telecommunications activities that can be apportioned using direct measures of cost causation.

Indirectly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and telecommunications activities which require an indirect measure of cost causation in order to relate the costs to the final objective.

Unattributable Costs - costs of assets and resources shared between electric utility services and telecommunications activities for which no causal relationship exists. These types of costs are accumulated and allocated to both the electric utility services and telecommunications activities through the use of a General Allocator computed by using the ratio of expenses directly assigned or attributed to electric utility services and telecommunications activities. To calculate the unattributable costs to be allocated to the telecommunications division, the unattributable costs would be multiplied by a fraction with the expenses directly assigned and attributed to telecommunications services as the numerator and the sum of the expenses directly assigned and attributed to telecommunications plus the expenses directly assigned and attributed to electric utility services as the denominator. The cost of goods (specifically wholesale power and wholesale telecommunications services) shall be excluded from the calculation of the directly assigned and attributed expenses.

Intracompany Loans - The current market rate of interest will be applicable to loans made by one division to the other division which rate of interest will not be less than the highest rate earned by the Electric Power Board of Chattanooga on its invested funds.

Taxes - The EPB will make tax equivalent payments with respect to its telecommunications services in accordance with T.C.A. § 7-52-404 and shall allocate for regulatory

purposes to the cost of its telecommunications services in an amount equal to a reasonable determination of state, local and federal taxes which would be required to be paid for each fiscal year by a nongovernmental corporation that provides the identical services.

IV.

Transactions with Affiliates

Charges for assets purchased by or transferred to the electric utility system from the telecommunications division shall be recorded in the operating accounts of the electric utility division at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the electric utility system is not available, the charges recorded by the electric utility system for such assets shall be the lower of their cost to the originating activity and the affiliated telecommunications division less all applicable valuation reserves, or their fair market value.

Assets sold or transferred from the electric utility system to the telecommunications division shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with the TRA or in a prevailing price held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price is applicable, the proceeds from such sales shall be determined at the higher of costs less all applicable valuation reserves, or estimated fair market value of the asset.

Services provided to an affiliate pursuant to a tariff filed with a regulatory authority shall be recorded in the appropriate revenue accounts at the tariffed rate. Services provided by the telecommunications division to the electric utility system when the same services are also provided by the telecommunications division to unaffiliated parties shall be recorded at the market rate. If the electric system provides substantially all of a service to or receives

substantially all of a service from the telecommunications division which are not also provided to unaffiliated parties, the services shall be recorded at cost which shall be determined in a manner that complies with the standards and procedures of the apportionment of joint and common costs between the electric system and telecommunications division operations of the EPB. The revenues for all transactions involving charges between the electric system and the telecommunications divisions shall be booked into operating revenue accounts if corresponding costs are recorded in operating expense accounts.

V.

Balance Sheet Accounting

Cash - The telecommunications division will maintain bank accounts separate from those of the electric system. All telecommunications cash receipts from customers and other external parties will be deposited directly in the telecommunications division bank accounts. Telecommunications disbursements will originally be paid from electric system bank accounts, but the telecommunications division will reimburse the electric system for the total at month-end via electronic funds transfer. Services performed by one division for the benefit of the other division will be handled by invoicing and payment processing just as with any external entity. Due to the balances maintained, there should be no bank charges assigned or allocated to either the electric system or the telecommunications division.

Receivables (External) - Telecommunications receivables will be fully segregated from electric receivables. Both billings and payments for telecommunications service will be recorded directly to appropriate telecommunications receivable accounts as they occur.

Payables (External) - Telecommunications payables to external parties will be recorded in the electric system's accounting system and will be paid from electric system bank accounts.

To maintain their telecommunications identity, these amounts will be recorded to telecommunications account numbers or in the telecommunications cost center. At month-end, a payable for the total reimbursement due to the electric system will be recorded in the telecommunications division's accounting system.

Intracompany Receivables and Payables - The electric system and the telecommunications division each will carry a receivable and payable account for intra-company transactions with the other. These accounts will contain billings and other amounts designated for such fund transfers between the two as will be needed to maintain a proper accounting separation of telecommunications and electric financial activity. Under this arrangement all intra-company transactions will be cash-based and will involve the transfer of funds. In determining the terms and conditions applicable to these intracompany receivables and payables, both parts of EPB will utilize the same standards that are applicable to outside parties.

Materials - All material assets will initially be recorded in the inventory accounts of the electric system. Material issues will either be directly assigned to telecommunications or electric or will be allocated if joint work is performed on a work order. Currently, the expenses of the provisioning and warehouse functions are loaded as an additive to the cost of each material item issued from inventory. This procedure will be applied to telecommunications material issues also.

Plant Assets - All plant assets will initially be recorded in the plant accounts of the electric system. The accounting procedures to be applied to plant assets that will be wholly or partially used to provide telecommunications service are explained below.

Plant Dedicated to Telecommunications Service - Some plant assets may be bought or constructed solely for telecommunications service purposes for which the telecommunications

division will fully reimburse the electric system. Other plant assets, such as a fiber optic route, will be constructed to provide both telecommunications and electric service. Both types of assets will be recorded in the electric system's plant accounts when installed, and a determination will be made regarding the portion that will be used by the electric system. The remaining portion, including excess capacity, will be purchased by the telecommunications division (with the telecommunications division paying the proportionate cost as shown on the electric system books) and recorded as a telecommunications asset in the appropriate telecommunications plant account. In the electric system's plant records, this telecommunications plant portion will be reported as a contra-asset. On the electric books it will be referred to as Plant Dedicated to Telecommunications in order to specifically identify it as plant used to provide telecommunications service. Retirement accounting entries for plant that has been apportioned between telecommunications and electric plant records will be divided between telecommunications and electric according to the average installation apportionment for the specific type of plant asset.

Plant Leased to Telecommunications Division - Plant assets such as poles, land, and buildings, which are jointly used by both the electric system and the telecommunications division but which are not easily physically divisible and assignable between the two, will remain entirely in the electric plant accounts and be leased by the telecommunications division rather than purchased from the electric system. All leases will be calculated in accordance with applicable FCC Part 32 definitions. The use of poles for pole attachments, which is currently already leased to other entities, and any similar items will be leased to the telecommunications division at the highest rate paid by an outside party for comparable pole attachments. For other leased plant, the electric system will develop a lease price that will fully cover the depreciation, maintenance,

and other loaded costs of the asset used. For example, floor space in the electric buildings will be leased to the telecommunications division on a per-square-foot basis.

Construction Work in Progress - EPB currently uses a work order system very similar to those used by telecommunications companies. The cost of materials, labor, vehicles and heavy equipment, benefits, and other items that are required to complete a telecommunications construction job will be processed through this system and separately identified from the costs of electric work. The accounting procedures for determining and recording these costs are described below in the Accounting for Revenues and Expenses section.

Depreciation - All depreciable assets recorded in the plant accounts of the telephone division will be depreciated in the telecommunications accounting system. Depreciation rates will reflect industry normal life spans. Like assets of the electric system and the telecommunications division will be depreciated using the same depreciation rate.

Amortization - Non-tangible assets and assets such as capitalized software will be amortized over industry normal life spans.

VI.

Accounting for Revenues and Expenses

Revenues - Telecommunications service revenues will be recorded directly to telecommunications revenue accounts as they are earned.

Labor Expenses - Labor for field employees and contractors performing telecommunications operation and maintenance work will be directly assigned to telecommunications expense accounts at the time such work occurs or will be appropriately allocated if telecommunications and electric work are jointly performed on a work order. Labor for the majority of office personnel will be allocated between telecommunications and electric on the basis of percentages

determined by time studies, which will be updated no less frequently than annually. As an example, the labor for accounting personnel will be divided between telecommunications and electric expense accounts according to a periodic analysis of the accounting functions performed by each employee. Such labor allocations will also be appropriately revised whenever work assignments or other pertinent circumstances change. Labor expenses for management and certain other administrative personnel will be allocated as a general and administrative expense as described in a later section.

Labor-Related Expenses - Training hours and time spent away from work due to sick leave, holidays, vacations, etc. will be accumulated monthly at the department level and prorated to the same accounts and in the same proportion as the department's labor dollars are charged. The allocation of payroll taxes and employee insurance to telecommunications and electric accounts is described in a later section.

Other Expenses - EPB's expense account numbers include very detailed functional codes for tracking specific expense categories such as supplies, membership dues, publications, postage, etc. Some expenses will be directly assigned to telephone, to electric, or to both if a basis for direct assignment can be established. An example would be travel, which can be directly assigned according to the specific circumstances of a trip taken. Other expenses such as departmental office-supplies will be allocated, using labor dollars, to the same accounts where the department's labor is directly recorded, whether telephone, electric, or both. The following explains the basis for allocation of certain general and administrative expenses and of several other major expense categories that will need to be allocated between telephone and electric accounts:

Payroll Taxes - EPB will allocate payroll taxes on the basis of total labor dollars.

Employee Insurance Expenses - EPB expenses for the employee retirement plan, disability insurance, term life insurance, and other benefits that are directly related to labor expenses will be allocated using total labor dollars. Other expenses such as health and dental insurance that are not a function of labor dollars will be allocated on the basis of labor hours.

Other Insurance Expenses - Property and liability insurance expenses will be allocated as appropriate. For example, the allocation for insurance on assets will be determined by the assets insured. Insurance on vehicles is currently distributed to accounts as part of the vehicle expense clearing process. Some insurance policies, such as general liability, have no directly assignable basis and will be allocated using the General Allocator.

Human Resources - The labor and expenses for the operation of the Human Resources Department will be allocated to the telecommunications division and the electric system using *the General Allocator*.²

Management and Other Administrative Personnel - Labor and expenses that cannot be directly assigned to telecommunications and electric accounts will be allocated using the General Allocator.

Board of Directors' Expenses - These expenses will be allocated using the General Allocator.

Services of City of Chattanooga - EPB currently pays the City of Chattanooga a monthly fee for two City officials to sign checks issued by EPB. These fees will be allocated using the General Allocator.

²The EPB contends that labor and expenses for the operation of the Human Resources Department should be allocated using total labor dollars. The parties disagree on the appropriate allocator for the expense.

Other General and Administrative Expenses - Only a relatively small portion of these expenses cannot be directly assigned or have no easily determinable allocation basis. These expenses will be allocated between telecommunications and electric using the General Allocator.

Telecommunications Expense - It is anticipated that telecommunications service for the electric system will be purchased from the telecommunications division. The electric system will be treated as any other telecommunications customer and will be billed at tariffed rates. These costs along with any other associated telecommunications costs are part of other General and Administrative Expenses and the telecommunications division will pay its share in accordance with the allocation using the General Allocator.

Payment Processing - For processing telecommunications payments, the electric system will charge the telecommunications division using the same terms and conditions available to other entities on a nondiscriminatory basis.

Marketing and Advertising - Directly assignable marketing and advertising costs will be directly assigned. For example, a billboard presenting telecommunications service features will be assigned to the telecommunications division. A very small dollar amount of marketing expense is anticipated to be of a joint nature. Such joint marketing expenses will be allocated between the telecommunications division and the electric system using the ratio of marketing expenses directly assigned and attributed to electric utility services and telecommunications activities. To calculate the joint marketing expenses to be allocated to the telecommunications division, the joint marketing expenses would be multiplied by a fraction with the marketing expenses directly assigned and attributed to telecommunications services as the numerator and the sum of the marketing expenses directly assigned and attributed to telecommunications plus the marketing expenses directly assigned and attributed to electric utility services as the

denominator. EPB does not currently permit other entities to have bill-stuffing privileges in its electric bills and shall not allow the telecommunications division to have such ability, unless provided to other third-party telecommunications companies.

Vehicle Expense - To allocate vehicle expenses to telecommunications accounts, EPB will continue to use the current system in which detailed records of the costs to operate and maintain vehicles are maintained. These vehicle expenses, including depreciation and insurance, are allocated to accounts in accordance with vehicle use, which is normally determined by the work performed by the employees to whom they are assigned. The expenses for vehicles assigned to crews that perform construction and maintenance work are allocated to accounts on a cost-per-hour basis. For all other vehicles, the allocation basis is cost per mile.

Mapping System and Software - EPB maintains a computerized mapping system. Like most of the other internally developed systems, the mapping system was directly expensed, and there is no accumulated capitalized amount to amortize. All expenses, including modifying or updating the system or other expenses associated with mapping, will be allocated between the telecommunications division and the electric system using the route miles of facilities mapped.

Service Restoration - This is another software system for which the costs have been directly expensed as incurred. All expenses, including modifying or updating the system or other expenses of the service restoration system, will be allocated to the telecommunications division and the electric system on the basis of the direct labor of employees performing field repairs.

VII.

Code of Conduct

Regulatory Compliance - The telecommunications division of EPB will be subject to all rules and regulations of the TRA in the same manner and to the same extent as other

telecommunications service providers; including without limitation, rules and orders governing anti-competitive practices.

Treatment of Similarly-Situated Parties - The EPB shall process all similar requests for the services of the electric utility system and the telecommunications division in the same manner and within the same time period whether requested on behalf of an affiliate of the EPB or a third party.

Customer Information - Customer information obtained by the electric system of the EPB shall not be provided to the telecommunications division or to third parties unless the customer to which the customer information relates has given express written authorization to do so and then such information shall be provided by the EPB only to the extent authorized and only to the parties specifically authorized to receive it by the customer.

Billing and Collection for Telecommunications Services - It will be more than three (3) years before EPB would consider using its electric bills to bill any amounts due for its telecommunications division activities. Before EPB does any such consolidated billing, it will request permission from the TRA with notice of that request being given to the intervenors.

Promotional Inserts in Bills - In the event that the EPB elects to insert any advertising or promotional materials on behalf of the telecommunications division into the envelope of the monthly bill of the electric utility system, the EPB shall permit any third party to insert advertising and promotional materials of the same general type into the envelope, after sufficient public notice, upon request, on the same terms and on a fair and non-discriminatory basis. For this purpose, sufficient notice is deemed to be a public notice published in at least two newspapers of general circulation at a minimum of 60 days prior to including the advertising and promotional inserts of the telecommunications division in the envelope for the monthly bills.

Separate Telephone Numbers - The EPB shall publish separate telephone numbers for its electric utility system and its telecommunications division. Nothing shall prevent the EPB from maintaining an internal telephone system commonly shared by the telecommunications division and the electric system.

Anti-Competitive Inducements - The EPB shall not state in any advertising, promotional materials, or sales efforts, that consumers who purchase products or services from its telecommunications division will receive preferential treatment in the provision of services from its electric utility system or that any other benefit will inure to customers resulting from its dealings with the telecommunications division.

Sales References by Utility Personnel - The personnel of the electric utility system shall not specify a preference for any product or service of the telecommunications division over like services of a third party provider.

Joint Marketing of Regulated and Nonregulated Services - The electric system and the telecommunications division of the Electric Power Board of Chattanooga may jointly offer their respective products and services to customers provided that the customer is informed (a) of the separate identities of each and (b) that the products and services of the electric utility system are distinct and separately priced from the offerings of the telephone division and the customer may select one without the other.

Loans and Credit Guarantees - The telecommunications division may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of EPB's electric system.

General Code of Conduct Provisions - EPB may not discriminate between the telecommunications division and any other entity in the provision or procurement of goods, services, and information, or in the establishment of standards.

EPB shall account for all transactions with the telecommunications division in accordance with generally accepted accounting principles or accounting principles in accordance with the FCC regulations, or accounting principles approved by the TRA.

VII.

Reporting Requirements

The telecommunications division of the EPB shall report to the TRA on an annual basis:

- (a) the name and address of all affiliated divisions;
- (b) all contracts entered into with affiliated divisions or entity, and all transactions undertaken with any affiliates without a written contract;
- (c) the amount of affiliate transactions by affiliate by account charged;
- (d) the basis used to record affiliate transactions (i.e. book value, fair market value, tariff, fully distributed cost);
- (e) total costs allocated or charged back to each division;
- (f) updates of the allocation factors used to allocate costs between the electric system and the telecommunications division;
- (g) the financial statement data, as recorded for each EPB division, in whatever format the TRA requires, including a copy of EPB's audited financial data for the electric system and for the telecommunications division and on a consolidated basis.³
- (h) a computation of all tax allocations for regulatory purposes as follows:
 - (1) Property Taxes. Computation will be net book value for taxable assets multiplied by the current City or County tax rate as appropriate. An

³Since the FERC and the FCC have different account requirements, the consolidated statement may not comply with either.

offsetting adjustment will be made to remove any In Lieu Of Taxes currently paid by EPB, which are surrogate payments for property and other taxes.

- (2) Sales Taxes. Computation will be the purchases of taxable goods and services during the reporting period multiplied by the applicable sales tax rate. EPB will show such an amount as totally expensed and will not reflect that portions of it may have been capitalized.
- (3) Other State and Local Taxes. Computation will be based on applicable tax code.
- (4) Federal Income Tax. Calculations will involve using the current federal corporate income tax rate multiplied by the net taxable income of the telecommunications division. EPB will make adjustments and deferments to taxes as appropriate and as used by other entities. For example, taxes will be calculated using allowable tax depreciation rather than book depreciation.

The EPB shall make available the books, accounts, memoranda, contracts and records of the electric system and the telecommunications division and any other affiliated company upon request of the TRA.

The EPB shall maintain books of account and supporting documentation in sufficient detail to permit verification of compliance with the cost assignment and allocation principles and the Code of Conduct approved by the TRA.

The TRA may order an audit to be performed no more frequently than on an annual basis of all matters deemed relevant by the selected auditor, and EPB and its affiliated divisions shall cooperate fully with all requests necessary to perform the audit.⁴ The audit shall be provided to the TRA not later than six (6) months after the onset of the audit, and provided to EPB not later than sixty (60) days thereafter.

⁴The TCTA contends that a provision should be added to require EPB to pay the cost of any independent audit or have the TRA assess the cost. EPB contends that such a provision would violate Tennessee Code Annotated § 7-52-401 by imposing on EPB a cost it does not impose on other telephone companies.

The EPB maintains an internal audit staff, which will be tasked annually with testing the compliance of the telecommunications division and the electric system with the Conditions set forth herein or supplemental conditions or provisions ordered by the TRA. Any written finding or work papers associated with such compliance tests shall be made available to the TRA.

Annually, the internal auditors for the EPB shall issue a statement detailing the EPB's compliance with the Code of Conduct.

The TRA shall have access to personnel of both the telecommunications division and the electric system who will be capable of responding to TRA inquiries with respect to, but not limited to, affiliate transactions and the nature of direct and indirect charges and billings between affiliates.

The EPB shall submit all other reports that are required to be filed with the TRA by Competing Telecommunications Service Providers.

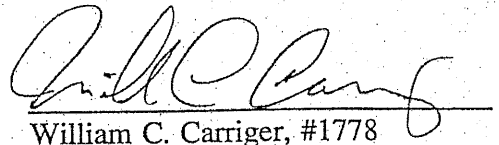
Respectfully submitted,

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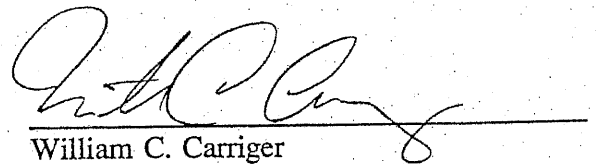
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CERTIFICATE OF SERVICE

I, William C. Carriger, hereby certify that I have served a copy of the foregoing document on the parties on the attached list, by depositing copy of same in the U.S. Mail, postage prepaid this the 3rd day of November, 1998.



William C. Carriger